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	<p><b>EXPIRES 31 DECEMBER 2001</b></p> <p>Environmental Quality</p> <p>OFF-SITE DISPOSAL OF MATERIALS FROM THE FOR FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM</p>	
	<p><b>Distribution Restriction Statement</b></p> <p>Approved for public release; distribution is unlimited.</p>	

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DEPARTMENT OF THE ARMY  
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Environmental Quality  
OFF-SITE DISPOSAL OF MATERIALS FROM THE FORMERLY UTILIZED SITES  
REMEDIAL ACTION PROGRAM

1. Purpose. This circular details USACE policy for disposal/treatment/reprocessing (disposal) of radioactively contaminated materials if sent off-site from projects in the Formerly Utilized Sites Remedial Action Program (FUSRAP). This policy is intended to help assure that these materials are disposed in a manner that complies with all applicable laws and regulations, is protective of human health and the environment, and protects the public interest from both the health and fiscal perspectives.
2. Applicability. This circular applies to all USACE commands having responsibility for executing FUSRAP. This policy is a matter of discretion within USACE and applies only to FUSRAP. This policy creates no enforceable rights on behalf of any entities or persons, and it is not intended to supercede or affect the application or other requirements of laws or regulations. This policy cannot be used as a basis to restrict lawful competition for the performance of work under Federal contracts.
3. Distribution Statement. Approved for public release; distribution is unlimited.
4. References.
  - a. Energy and Water Development Appropriations Act, 1998, Pub. L. 105-62.
  - b. Energy and Water Development Appropriations Act, 1999, Pub. L. 105-245.
  - c. Energy and Water Development Appropriations Act, 2000, Pub. L. 106-60.
  - d. Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA), 42 U.S.C. § 9601 *et seq.*
  - e. National Oil and Hazardous Substances Pollution Contingency Plan, (NCP), 40 C.F.R. Part 300.
  - f. Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99-240, 42 U.S.C. § 2021b *et seq.*

g. *USACE Formerly Utilized Sites Remedial Action Program (FUSRAP) Report to Congress.*

h. EP 415-1-266, *Resident Engineer Management Guide (REMG) for Hazardous, Toxic and Radioactive Waste (HTRW) Projects.*

i. EP 200-1-2, *Process and Procedures for RCRA Manifesting.*

5. Background.

a. History. The Department of Energy (DOE) created FUSRAP in the 1970's to identify, investigate, and clean up or control residual contamination remaining at sites where work had been performed as part of the nation's early atomic energy program. Generally, sites that became contaminated through uranium and thorium operations were decontaminated and released under the regulations in effect at the time. Since then, more stringent standards have been applied in some circumstances. FUSRAP funds the additional cleanup required to bring these sites into compliance with today's environmental standards. Most of this remaining contamination consists of low specific activity contaminated soils. In response to later Congressional direction, DOE also added some sites to FUSRAP that were not involved in the nation's atomic energy program. Further historical information on FUSRAP is provided in reference 4.g.

b. Authority. Congress authorized USACE to conduct cleanup work at FUSRAP sites pursuant to references 4.a. through 4.c. References 4.b and 4.c. also clarify Congressional intent that response actions at FUSRAP sites "shall be subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Part 300)."

c. Necessity for this Policy. This policy is necessary to assure that all off-site FUSRAP disposals have been fully coordinated with the appropriate parties, and that any proposed off-site disposal complies with applicable laws and regulations.

6. Policy. USACE will dispose of FUSRAP radioactively contaminated materials only at facilities licensed by the Nuclear Regulatory Commission (NRC) or an Agreement State, or at facilities permitted by a Federal or state regulator to accept radioactive materials in accordance with all applicable laws and regulations. Materials will be disposed of in a cost-effective manner, considering all feasible options that achieve protectiveness and compliance with all applicable Federal and state laws. In order to assure this policy is implemented, the project manager will document a disposal strategy containing the following elements in the Project Management Plan for each FUSRAP project.

a. Characterization of FUSRAP Materials. USACE will characterize FUSRAP materials to determine the laws and regulations that apply to off-site disposal of specific materials at each site. The use of appropriate analytical testing to determine physical/chemical characteristics and a determination of historical factors about the materials processed on the site are necessary to properly characterize the materials as to category of radioactivity and Resource Conservation and Recovery Act (RCRA) hazardous waste codes, if relevant, and thus determine who has regulatory authority. More than one type of material may be identified for a particular site. Characterization will be conducted in consultation with the appropriate technical and legal specialists. The characterization process will be coordinated with the Hazardous, Toxic, and Radioactive Waste Center of Expertise and the conclusion will be documented, and retained in the project file.

b. Identify and Coordinate with Potential Disposal Facilities. Based on the characterization of FUSRAP materials, USACE will identify potential disposal facilities and will assure that such interested off-site disposal facilities are provided accurate characterization information concerning FUSRAP material intended for off-site disposal.

c. Compare Transportation and Disposal Costs of Viable Facilities. USACE will determine the most cost-effective option for disposal of FUSRAP material. Packaging, transportation (including potential demurrage costs), and disposal fees will be included in the cost effectiveness analysis.

d. The Off-site Rule. Only facilities meeting the NCP Off-site Rule's (40 C.F.R. § 300.440) acceptability criteria will be used for disposal of FUSRAP materials that are CERCLA waste, including radionuclides. Under this rule, USACE will notify the Environmental Protection Agency (EPA) Regional Off-site Coordinator (ROC), in the region where the selected facility is located, of the intent to send CERCLA waste to that facility. USACE will transport CERCLA waste off-site only when the ROC has made a finding and notified USACE that the receiving facility meets the compliance and release criteria in 40 C.F.R. § 300.440 (b) and is therefore acceptable under the Off-site Rule.

(1) In the event of an emergency posing an immediate and significant threat to human health or the environment, shipment may commence prior to the ROC's determination. The project manager may consider temporary measures, such as interim storage, to allow time to locate an acceptable facility. The ROC must be notified and the response received prior to final disposal of the CERCLA waste.

(2) If shipments are not initiated within 60 days of the ROC's determination of the facility's acceptability status, then USACE will recheck the status with the ROC. In the event that the facility's status under the Off-site Rule changes to unacceptable, and EPA notifies the facility and the project manager, material will cease to be sent to that facility until the status of the facility is officially changed to acceptable by EPA under the Off-site Rule.

(3) The ROC determination does not supersede the facility regulator's authority to determine the acceptability of a material under the facility's license/permit; however, waste may not be shipped and disposed of at the facility without the EPA finding of acceptability under the Off-site Rule.

e. Facility Regulators. USACE is responsible for ensuring that all appropriate contacts (NRC, EPA, and/or state) are made with regulators before shipment of FUSRAP materials off-site for disposal. Open and early communication with regulators is necessary for the successful execution of this policy.

(1) A written description of the materials to be disposed will be provided to the selected facility. The facility will seek to obtain written authorization from the appropriate regulators, indicating that the proposed disposal is consistent with applicable regulations and the permit or license. The USACE will ensure that 1) the nature of the material to be disposed has been accurately represented, 2) acceptance is unqualified, and 3) the regulator indicates the proposed action would not violate applicable laws and/or regulations or the facility permit or license.

(2) There may be limited amounts of low-level radioactive waste (LLRW), as defined by the LLRW Policy Amendments Act (reference 4.f.), on some FUSRAP sites. Disposal of such material may be affected by regulations governing the regional LLRW compacts. Since these vary among compacts, plans for disposal of LLRW must be coordinated with District Office of Counsel to ensure compliance with all applicable regulations.

(3) All contacts will be documented and all records retained in the project file, as well as copies of all written agreements and approvals.

f. Transportation Requirements. Shipments of FUSRAP materials will comply with all applicable NRC and Department of Transportation requirements. FUSRAP materials that are a RCRA hazardous waste must also comply with applicable EPA and state manifest and transportation requirements. See references 4.h. and 4.i. for a discussion of these requirements. USACE will also follow the additional items below.

(1) USACE personnel are responsible for signing shipping papers in accordance with reference 4.i.

(2) A secondary non-DOT marking sticker should be added to all bulk containers of FUSRAP material. The intent of this sticker is to help ensure that FUSRAP materials, no matter their hazardous characteristics, are appropriately disposed.

(3) A Certificate of Disposal or Placement is required for all off-site disposal of FUSRAP materials. This certificate will provide a complete record of the final disposition of the FUSRAP material. The certificate should identify the individual quantities of material received at the disposal facility and the location where the material is finally placed after disposal.

(4) A Chain-of-Custody form will be required for the off-site disposal of all FUSRAP material, including material that is not regulated by DOT, EPA, or NRC.

7. Implementation. This policy is effective immediately.

FOR THE COMMANDER:



HANS A. VAN WINKLE  
Major General, USA  
Deputy Commander for  
Civil Works